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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

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UNITED STATES OF AMERICA,	)	Cause No. CR 07-19-GF-SEH
	)	CV 10-41-GF-SEH
Plaintiff/Respondent,	)	
	)	
vs.	)	ORDER DENYING MOTION UNDER
	)	RULE 60(b)
LEWIS LYNN MITCHELL,	)	
	)	
Defendant/Movant.	)	

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On August 2, 2010, this Court dismissed Defendant/Movant Lewis Lynn Mitchell's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. On August 23, 2010, Mitchell moved to vacate the judgment "under Rule 36 adopted for criminal matters, the essential language of Rule 60 of the Civil Rules." Mitchell refers to this Court's denial of "Petitioner's Audita Querela motion." Omnibus Mot. (doc. 51) at 1.

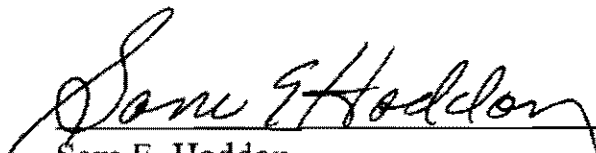
Mitchell filed a "Petition for Habeas Relief Under 28 U.S.C. § 2255 on Motion to Set Aside, Vacate or Correct Sentence" (doc. 46), not a petition for writ of audita

querela, which is not available to him, United States v. Gamboa, 608 F.3d 492, 492 (9th Cir. 2010) (citing Carrington v. United States, 503 F.3d 888, 889 (9th Cir. 2007)). 28 U.S.C. § 2255(f) is a statute of limitations. Mitchell failed to comply with it. Order (doc. 48) at 1-2. Fed. R. Crim. P. 36 does not apply because there is no clerical error or oversight. Mitchell presents no grounds for relief, either against the Order dismissing his motion or against the denial of a certificate of appealability, under Fed. R. Civ. P. 60(b).

**ORDERED:**

1. Mitchell's motion under Rule 60(b) (doc. 51) is DENIED.
2. The Clerk of Court shall immediately process the appeal.

DATED this 25<sup>th</sup> day of August, 2010.

  
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Sam E. Haddon  
United States District Court